

General Information Letter: Activities performed by third parties are not income producing activities of the taxpayer for sales factor purposes.

July 6, 2006

Dear:

This is in response to your letter dated June 21, 2006, in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

I represent a client who provides appraisal services to clients who could be in any state in the country. This service is entirely conducted in the state of Colorado with the only exception being that as a part of this service, my client hires a local person in the city in question on a contract basis to visit a particular real estate parcel, prepare an inspection report, and email this report back to my client. This inspection report represents due diligence, and is relied on by my client in their work.

My client is paid by their client with all payments being received in Colorado. Please write back to me and state your position on which if any taxes including sales, income, excise, etc that you believe based upon this scenario would be reportable and payable to the State of Illinois.

Department Response

This reply deals only with the Illinois income tax aspects of your correspondence. Our Sales Tax Legal Division will be responding separately to your questions regarding other Illinois taxes.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 201 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The Due Process and Commerce Clauses of the Federal Constitution limit the power of States to subject foreign corporations to tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v.

North Dakota, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. *Id.*

It is generally beyond the scope of a letter ruling to give precise guidance on nexus issues. However, the facts recited in your request indicate that your client might not apportion any income to Illinois even if it does have nexus. Based on the information in your letter, IITA Section 304(a)(3)(C) is most applicable to your client's situation. Accordingly, a more pertinent question is whether your client has income producing activity in Illinois. IITA Section 304(a)(3)(C) states as follows:

(C) Sales, other than sales governed by paragraphs (B) and (B-1), are in this State if:

(i) The income-producing activity is performed both within and without this State and a greater proportion of the income-producing activity is performed within this State than without this State, based on performance costs; or

(ii) The income-producing activity is performed both within and without this State and a greater proportion of the income-producing activity is performed within this State than without this State based on performance costs.

Enclosed please find a copy of IITA Section 304 along with a copy of 86 Ill. Adm. Code Section 100.3370. The Illinois Department of Revenue regulation 100.3370 defines "income producing activity" in subsection (c)(3). In particular, subsection (c)(3)(A) provides that activities of an independent third party – such as the local inspectors in this case – are not considered "income producing activities" of the taxpayer.

Section 502(a) of the IITA describes when an Illinois income tax return is required. Pursuant to Section 501(a), an Illinois income tax return is required in two situations. The first situation is when a taxpayer is liable for Illinois income tax. The second situation is, in the case of a corporation qualified to do business in Illinois, when the taxpayer is required to file a federal income tax return, regardless of whether such person is liable for Illinois income tax.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
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